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OFFICE OF PETITIONS

In re Application of :
Eugene Matzan :
Application No. 10/772,535 : DECISION ON PETITION
Filed: 02/06/2004 :
Title: System for detection of defects in :
railroad car wheels :
:

This is decision on the petitions filed June 4, 2006, October 10, 2006, and October 23, 2006, all of which are being treated as a petition to withdraw the holding of abandonment in the above-identified application.¹

On June 22, 2005, the Office mailed a nonfinal Office action, which set a three month shortened statutory period for reply. In the apparent absence of a timely filed response, the application was held abandoned on September 23, 2005. The Office mailed a Notice of Abandonment on May 15, 2005.

In the present petition, petitioner asserted that the Office issued the Notice of Abandonment in error because petitioner submitted a timely response accompanied by a certificate of mailing dated September 6, 2005. With the present petition, petitioner submitted a copy of the previously mailed reply in the form of an amendment, bearing a certificate of mailing dated September 6, 2005. The certificate of mailing of September 6, 2005, would have rendered the amendment timely filed if received in the USPTO; however, the application file does not include the original reply or the certificate of mailing.

Pursuant to 37 CFR 1.8(b):

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed,

¹ The Office notes that the petitions filed on June 14, 2006, and October 10, 2006, indicated an incorrect application No. 10/772,536 instead of 10/772,535.

terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The present petition satisfies the requirements of 37 CFR 1.8(b). The petition is **granted**. Accordingly, the holding of abandonment for failure to file a timely reply to the nonfinal Office action of June 22, 2005, is withdrawn and the application is restored to pending status. The Office will accept the copy of the reply submitted with the petition in place of the reply mailed on September 6, 2005.

The \$250.00 petition fee is unnecessary and will be refunded by treasury check in due course.

This application is being referred to Technology Center AU 3617 for appropriate action on the amendment submitted on June 14, 2006 (certificate of mailing dated September 6, 2005).

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3211. All other questions regarding the status of the application or the examination process should be directed to the Technology Center.

C. T. Donnell

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